IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2701 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AMARDAS GOVINDDAS CHAUHAN

Versus

DISTRICT PRIMARY EDUCATION OFFICER

Appearance:

MR KB PUJARA for Petitioner

MR HS MUNSHAW for Respondent No. 1

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 03/05/2000

ORAL JUDGEMENT

#. Rule. With the consent of the parties the matter is taken up for final hearing.

#. The petition is filed by Primary Teacher who is

serving under the respondent and has put in more than 39 years service. It is the case of the petitioner that the date of birth of petitioner is 6.2.1943 and that he is due for retirement and his superannuation age is 6.2.2000. It is also the case of the petitioner that his pension papers are also prepared. What brings him to this court is that at this stage the respondent has passed the order transferring the petitioner from Vanod Kanya Shala to Sunshiya Primary School. The petitioner is a native of Vanod and as he is left with one year service, as per the instructions contained in Government Resolution dtd.8.4.1999 the petitioner is not required to be transferred.

#. Besides this the petitioner has also submitted that village Sunshiya is about 10 Kilometers away from village Vanod and there is no S.T.Bus service at school time is available and therefore the petitioner will have to go by riding bicycle but the petitioner is suffering from arthritis on both legs and therefore he will not be able to ride bicycle. It is also submitted by the petitioner that the petitioner and his wife are residing at village Vanod all alone as his son is serving in B.S.F and is posted at Bangladesh border. The petitioner submitted that the petitioner had made a representation on 29.3.2000 to the Director of Primary Education but the same has not borne any fruits. The petitioner, had therefore to proceed on leave for a period of 9 days from 28.3.2000 to 5.4.2000.

#. An affidavit in reply is filed by one Shri Mohanbhai.P.Patel- Dy. District Primary Education Officer, Surandranagar. It is submitted by the deponent that the petitioner is to retire on 31.5.2001 and thus, there is still more than 1 one year of service to go. It is also submitted in the affidavit that petitioner is working at Vanod Kanya Shala of Taluka Patdi for last more than 12 years and that he is involved in internal problem of staff members. It is also stated that the petitioner who was working as a Headmaster being a Senior Teacher in the said school was facing several complaints from other staff members as well as villagers of village Vanod. A copy of first complaint received from the villagers dtd. 15.2.99 is also produced alongwith the affidavit in reply. It is also stated in the affidavit that thereafter also several complaints are received against the petitioner as well as against the other teachers who were part of the rival group, causing damage to the reputation of the school as well as the institution. It is also submitted in the affidavit that

the respondents are having sufficient material and that the same may be permitted to be produced on the record of this case. It is also stated in the said affidavit that the present petitioner alongwith one Mr.Radheyshyam Amratlal Raval and Mr.B.S.Patel was involved in the act of indiscipline and misconduct. It is also stated in the affidavit that it is in view of the repeated complaints and continuous indiscipline, the respondent thought it fit to transfer the present petitioner as well as that Radheyshyam Raval who were continuously quarreling inter-say. It is also stated that the petitioner and said Shri Raval are transferred within the range of 8 Kilometer from village Vanod and therefore it is submitted that the transfer order is not required to be interfered with, more particularly when the transfer is within a range of 8 Kilometers and that the petitioner will not be required to change his head quarter from village Vanod. It is also stated in the affidavit that the District Primary Education Officer himself visited the school on 25.2.2000 and heard staff members as well as villagers and it was found that it will be in the interest of the school and the students that both these erring teachers be transferred with immediate effect. Therefore the impugned transfer order came to be passed, which according to the deponent is in the interest of school and students. It is also stated in the affidavit that after the impugned order came to be passed on 21.3.2000 Mr.Raval is relieved and similarly the petitioner also stands relieved. It is also stated that the petitioner having come to know about the transfer order had applied for the leave from 28.3.2000 to 5.4.2000, but the said leave application is not granted. It is prayed by the deponent that this Spl.C.A. be dismissed in limine and ad interim relief granted be vacated.

#. From the averments made in affidavit in reply, it is clear that the transfer order based on the complaint is nothing but a punitive order and therefore the same could not have been passed by the authorities without following the proper procedure under the law. Further affidavit in reply does not reply to special grounds which are set out seeking an indulgence in favour of the petitioner. Like the petitioner is transferred to village Sunshiya which is about 10 Kilometer (according to the affidavit in reply it is 8 Kilometer) and that there is no S.T.Bus service available at the school time, therefore the petitioner will be required to go by bicycle but the petitioner will not be able to ride bicycle as he is having arthritis on both the legs. The deponent has not replied to these material averments/ contentions which

would have warranted the indulgence on the part of the authorities themselves. The deponent has tried to submit that the petitioner has not submitted the correct information regarding his date of retirement but then the fact remains that date of birth mentioned by the petitioner i.e. 6.2.1943 is the correct date of birth and therefore the date of retirement is only as matter of calculation and rules and regulation of the Government.

#. In the result the petition is allowed the impugned order dated 21.3.2000 is quashed an respondent authorities are directed to allow the petitioner to continue to serve at village Vanod. However, the petitioner is directed to file an undertaking before this court to the effect that he will not create any further trouble and will continue to discharge the duty with utmost sincerity without giving any cause for dissatisfaction to the authority. Rule is made absolute with no order as to costs.

kks